



An
Bord
Pleanála

Inspector's Report ABP315720-23

Development	Sub-division of existing site and construction of 2 storey dwelling.
Location	12 Stephentown Lawns, Two Mile House, Naas, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	221197.
Applicant	Elizabeth Loughnane.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	Third Party
Appellants	Tom and Breda McHugh.
Observers	None
Date of Site Inspection	29 th June 2023.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The development is located in the village of Two Mile House a village six kilometres east of Newbridge in County Kildare. The appeal site is within the established residential development of Stephentown Lawns which is a development of large detached dwellings of individual design with large individual sites on the southern side of the village.
- 1.2. On the appeal site is a large split level dwelling centrally located on the site with a single storied to the front and two storied at the rear utilising a significant fall in level in a southerly direction from the roadside boundary which defines the site's northern boundary. To the north of the appeal site is a dormer type dwelling and the common boundary is defined by a dense and well established hedge in excess of three and a half metres in height.

2.0 Proposed Development

- 2.1. The development as applied for is the sub-division of existing site 12 Stephentown Lawns and for the construction of 2 storey dwelling located to the north of the existing dwelling adjoining the boundary with the adjacent site of 11 Stephentown Lawns. The site area of the proposed dwelling is stated as 0.13 hectares with a road frontage of approximately 18 metres and a depth of approximately 75 metres.
- 2.2. The proposed dwelling is two storied/split level in design with the front elevation single storied and two storied in effect in the middle core of the dwelling with a single storied section at the rear. The front building line is approximately 19.5 metres from the front boundary corresponding roughly with the main front building line of the existing dwelling on the site and approximately 5 metres forward of the front building line of the dwelling in the adjoining site to the east. The side elevations of the proposed dwelling are approximately 1.75 metres from the western and eastern side boundaries. The development provides for a large reinforced concrete retaining wall which will facilitate the provision of an access to the lower floor area
- 2.3. The dwelling which is stated as having a floor area of 292m² has varying roof ridge heights 2709mm in the front single storey section, 7891mm in the middle section and 4409 mm in the rear single storey section above varying finished floor levels.

- 2.4. It is proposed to treat foul effluent by the construction of new wastewater treatment plant (WWTP). Water supply is from the public mains and surface water is proposed to be discharged to a soakpit. Details were submitted in relation to the sizing of the WWTP based on a design hydraulic loading for a PE of 6. A site characteristic assessment with test results was also submitted indicating required area for percolation discharge after treatment to groundwater. A 90m² percolation area with a polishing filter is proposed in the southern rear area of the site with direct discharge not pumped from the WWTP to this area.
- 2.5. Initially it was proposed to provide the new proposed dwelling with an individual vehicular entrance but this was subsequently revised in further information submitted to provide for a shared entrance serving the existing dwelling and the proposed dwelling.
- 2.6. Further information was submitted on the 29th November 2022 in relation to proof of connection to the local area, a revised entrance and details of surface water discharge.

3.0 Planning Authority Decision

3.1. Decision

The decision of the Planning Authority was to grant planning permission subject to 21 conditions. Condition no 2 provides for an occupancy agreement.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planning report refers to policy context and submissions received. Further information was requested in relation to local housing demand, a revision of the vehicular access and clarification on surface water disposal.

The planning report in response to the further information submitted recommended planning permission.

3.2.2. Other department reports.

No objections to the development received from other department including the environmental department. There was an initial request for further information from the transportation department in relation to the proposed vehicular access and surface water drainage.

4.0 Planning History

P.A. Ref. No.995/99.

Planning permission granted for 19 detached bungalows with puraflo sewage treatment systems, percolation areas and site development works subject to 38 conditions.

5.0 Policy and Context

5.1. Development Plan

The statutory development plan is the Kildare County Development Plan 2023-2029. Volume 1 sets out broad policy and strategy in relation to the overall county including a settlement strategy and hierarchy in chapter 2 where Two Mile House is defined within the settlement hierarchy as a Rural Settlement. Chapter 3 relates to housing and in relation to development within it is the policy of the Council to as stated in HO P5 to promote residential densities appropriate to its location and surrounding context and in section 3.13.7 in providing a sustainable alternative to One Off Housing as stated in policy O P24 to *promote and facilitate the provision of sustainable alternatives to one off housing through the designation of lands specifically for serviced sites across a series of villages and rural settlements in County Kildare.*

Chapter 6 relates to Infrastructure and Environmental Services and in relation to wastewater objective IN O18 refers to *discourage the provision of single house septic tanks and treatment plants in the plan area to minimise the risk of groundwater pollution. Where such facilities are permitted, full compliance with the prevailing regulations and standards, including the EPA's Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses (pe≤10), (2021) as may be amended, will be required.*

Chapter 15 relates to Development Management Standards which sets out standards in relation to a range of matters including in section 15.2 on General Development Standards including overlooking / separation distances and 15.4 design, layout and boundary treatments and other facets of residential development.

Volume 2 part 2 of the plan specifically refers to villages and rural settlements. The appeal site is located within the development area boundary map of Two Mile House. In Volume 2 section 3.3 it is indicated that *Rural Settlements are located throughout the county. These settlements will develop as local centres for their rural catchments with appropriate levels of growth to cater for local demand. Expansion will be controlled to minimise pressure on services and the environment and to counter unsustainable commuting patterns. Each of the 20 no. Rural Settlements is subject to a development strategy (refer to V2 3.21). Each settlement strategy comprises a settlement core, existing built-up area, settlement expansion area and a settlement boundary. The lands within the defined settlement boundaries do not constitute zoned land.*

In V2 3.4 Village Plans and Rural Settlement Policy it is indicated that *it is the policy of the Council to: V GP 1 Facilitate local housing demands together with the provision of local and community services / facilities and local employment opportunities throughout the villages and rural settlements in accordance with the principles of proper planning and sustainable development.*

Objectives in relation to villages and rural settlements include facilitating sustainable population growth in the identified Rural Settlements to cater primarily for local demands. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site; proposals shall also conform to the Development Management Standards contained in Volume 1, Chapter 15; develop lands in both the villages and settlements sequentially and generally in accordance with the following: (i) Development will be encouraged from the centre outwards with undeveloped lands closest to the centres being given first priority; (ii) The development of 'infill' sites and lands with opportunities for brownfield/ regeneration will be encouraged.

5.2. Natural Heritage Designations

None relevant.

5.3. EIA Screening

5.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal can be summarised as follows:

- The appellants reside in the adjoining site to the north.
- The residential estate has enabled enjoyment of a living experience with a country experience in an urban setting.
- To apply for a dwelling within 1.7 metres of their boundary is unreasonable and shows total disregard for the character and historic ethos of the estate.
- Reference is made to the location of the site notice and that a second notice near the entrance to the estate was warranted.
- The planner's report is that there is precedence but the subdivision of site 13 is much more balanced in relation to area allocation and not the cramped proposal of the current proposal. The current proposal will set an undesirable precedent.
- The original permission provided for reserve percolation areas on the individual sites and historically development plans limited installation of wastewater treatment plans were possible. the decision to grant this permission is in direct conflict with the original permission.
- In relation to the design of the proposed dwelling it was to maximise use of the available space between the appellants' property and the proposed new

boundary, to minimise overlooking of their own property to the detriment of the utilisation of natural light and invasion of the appellants' privacy and an alternative may have been considered.

- Reference is made to living room windows which have a higher head height.
- Significant excavations are likely to occur and how is it proposed to protect the boundary.
- A map indicating potential precedents is included.

6.2. **Planning Authority Response**

The planning authority in a response indicate they have no further comments other than requesting the Board endorse its decision.

6.3. **Applicant Response.**

The applicants' response to the grounds of appeal can be summarised as follows:

- Reference is made to previous submissions made by or on behalf of the appellants in the course of the assessment of the application by Kildare County Council and is of the view that the submission on the further information is invalid.
- The applicant's spoke to neighbours about the proposal which is the subject of the current application/appeal.
- The appellants have not demonstrated how the proposed development would impact on them in the manner stated.
- A valid planning application was lodged in full compliance with the regulations.
- The plans and elevations will show that it is designed with due regard and consideration to neighbours.
- The boundary is screened by a 3.5 metre hedge and the proposed dwelling is 18 metres from the neighbours dwelling.
- The windows referred to in the grounds of appeal are provide natural light to en suites and the boundary hedge is higher than all of the windows.

- There is a condition to plant additional hedging on the applicant's side of the boundary and reference is made to three windows on the appellants' gable which towards the appeal site and do not cause issue.
- The planning report refers to the proposal will not result in undue overlooking and the suggestion to reverse the floor plan would not be workable.
- The wastewater be in accordance with wall guidance and requirements.
- The hedge is within the appellants' property and the applicant has not control to rectify an issue that may arise but there is a condition for a new hedge.
- Permission was originally granted for 19 dwellings and now there are 22 and the proposal would not set a precedent. Permissions for sub-divisions have been granted in this and other estates.
- Photographs are submitted in support of the response.

7.0 **Assessment**

7.1. The main issues in this appeal are development plan policy and principle of development; design and layout of the proposed development, impact on residential amenities and services. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- Policy and principle of development
- Design and layout of the proposed development,
- Impact on residential amenities
- Services,
- Appropriate Assessment

7.2. **Policy and principle of development.**

7.2.1. The provisions of the current Kildare County Development Plan 2023 -2029 in volumes 1 and 2 outline the policy context. The site is located within the development area boundary of the rural settlement of Two Mile House although it is clearly stated that lands within the defined settlement boundaries do not constitute

zoned land. Within rural settlements it is policy to facilitate *local housing demands*. Local demand for rural settlements is defined as persons residing for a period of 5 years within a 10km radius of the site and to develop lands in both the villages and settlements sequentially and encourage the development of 'infill' development.

- 7.2.2. The principle of developing the appeal site is established as it is within an already established residential area within the development boundary. The local demand for a residential unit is also established as the applicant is a child of the owners of the site to be sub-divided with long established local ties to the area and complies with the provisions of the County Development Plan in relation to the requirements as set out for local demand.

7.3. Design and layout of the proposed development

- 7.3.1. The primary consideration is having established the principle of development is the design and layout appropriate in the context of site as proposed. The grounds of appeal have questioned whether the site is suitable for sub-division. In particular the issue of precedent is raised and that the proposed site cannot be compared to the subdivision of site 13 which is much more balanced in relation to area allocation and not the cramped proposal of the current proposal. I would acknowledge that site no 13 represents a more balance sub division of that site but the issue is whether the proposed site in both area and configuration can accommodate a dwelling which complies with planning requirements and does not impact adversely on the amenities of the area.
- 7.3.2. The site has an area of 0.13 hectares with a road frontage of approximately 18 metres and a depth of approximately 75 metres which by urban standards is a large site and the site has a more urban setting and characteristic and is within a small village. It is noted that dwellings in the residential estate are individual designs with no uniformity and vary considerably in relation to scale and height.
- 7.3.3. In relation to the design and siting of the proposed dwelling the front building line generally accords with existing adjacent properties. The dwelling in its design has taken into account the contours of the site by providing a split level design with a single storey in the front section and two storied to the rear similar to the existing dwelling on the original site. in terms of the dwelling's footprint, it is designed to work within the site's width and the axis is primarily from front to rear. Given the absence

of uniformity of design in the residential estate the design concept is not at variance or out of keeping with the area.

7.4. Impact on residential amenities

- 7.4.1. The issue of overlooking is raised in the grounds of submission. In relation to potential overlooking on the appellants' property the gable windows on the upper floor level referred to on the submitted drawings as the ground floor facing the appellants' property are en-suite windows and are not habitable room windows. All windows of habitable rooms on this are on the front and rear elevations with the exception of a window on the landing area which faces towards the parents dwelling. Issues of a direct overlooking of the appellants dwelling and lands do not arise and any views from habitable rooms would be angled views. In terms of an urban setting no level of significant impact arises. A condition requiring the installation of obscure glazing on the upper level gable windows would address concerns in this regard.
- 7.4.2. There is a separation distance of 1.75 metres between the gables of the proposed dwelling and the proposed site boundaries of the adjacent properties. In the context of an urban setting the separation distance is adequate. I note reference is made to the possibility that screening afforded by the hedgerow could be impacted by the proposed development but as indicated there are habitable windows on the gable facing this hedgerow and boundary and the planning authority have in condition 4(a) of their decision required a landscaping condition which includes supplementary hedgerow planting along this boundary which I consider is reasonable.

7.5. Services

- 7.5.1. In relation to wastewater treatment the proposal provides for a WWTP based on a design hydraulic loading for a PE of 6. The requirements for the WWTP and percolation area were based on a site characteristic assessment with test results indicating the required area for percolation discharge after treatment to groundwater based on current standards for assessment of such proposals which is based on the current standard and guidance the EPA's Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses ($pe \leq 10$), (2021). Based on the site assessment a 90m² percolation area with a polishing filter is proposed in the southern (rear) area of the site with direct discharge not pumped from the WWTP to

this area and the site has adequate area to accommodate this percolation in accordance with the guidance.

I note reference is made in the grounds of appeal that this area was proposed /required as a reserve percolation area when the parent's dwelling was permitted but the current EPA guidance has replaced the SR6 1991 standard for assessment of individual wastewater treatment for single houses with an emphasis on a higher level of treatment prior to discharge to groundwater and improved receiving ground conditions and defined site percolation areas based on testing of ground conditions with the emphasis on qualitative standards for treatment of effluent rather than quantitative standards.

In relation to storm and surface water drainage, it is proposed to discharge to soakaways and the Roads Authority have no objections after revised details were submitted which preclude discharge to the road.

7.5.2. The proposal provides for connection to public mains water and there is no objections in relation to this.

7.5.3. The proposal development provides for a shared access in a revised proposal. The site is within an established residential area and the shared access is acceptable.

7.6. Appropriate Assessment Screening

7.7. Having regard to the nature and scale of the proposed development, to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. I recommend that permission be granted.

9.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed development, its location within an established residential estate within the village of Two Mile House and its relationship to existing residential development in the vicinity of the site, it is

considered that the proposed development would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity of the site and would be in accordance with the stated provisions of the Kildare County Development Plan 2023-2029 which are considered to be reasonable. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and in the interest of the proper planning</p>

	and sustainable development of the area.
3.	<p>The existing dwelling shall be occupied as a single residential unit and shall not be used for any commercial use or for the carrying out of any trade.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>The windows on the ground (upper) floor northeastern gable elevation shall be glazed with obscure glass.</p> <p>Reason: To prevent overlooking of adjoining residential property</p>
5.	<p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority within two months of the date of this order.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Within two months of the date of this order the applicant shall submit to and agree with the planning authority pay to the planning authority a landscaping scheme in relation to the site.</p> <p>This scheme shall include the following:</p> <p>(a) A plan to scale of not less than 1:500 showing;</p> <p>(i) Existing trees, hedgerows, specifying which are proposed for retention as features of the site landscaping,</p> <p>(ii) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder including supplementary hedgerow along the northeastern boundary of the site.</p> <p>(b) A timescale for implementation.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p>

	Reason: In the interests of visual amenity
7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Surface water arising from the new access shall be disposed of within the site and not discharge onto the public road.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution</p>
9.	<p>The proposed entrance to the site shall be part of a combined shared recessed entrance and shall be constructed in accordance with the details submitted to the planning authority on the 29th November 2022.</p> <p>Reason: in the interests of traffic safety.</p>
10.	<p>(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 5th day of October, 2022, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with</p>

	<p>the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health</p>
11.	<p>The applicant/developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

. Derek Daly

. Planning Inspector

7th July 2023